

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
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(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the controlling Agreement when it unjustly assessed Carman J. A. Weisgarber fifteen (15) days actual suspension on November 21, 1980, and reaffirmed discipline on January 21, 1981, as a result of investigation held December 23, 1980, at Brewster, Ohio.
2. That the Norfolk and Western Railway Company be ordered to compensate Carman J. A. Weisgarber for all monetary losses that were incurred due to this incident as regards his wages, vacation rights, seniority rights, hospital benefits, and all other benefits he would have been entitled to had this violation on the carrier's part not have occurred.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant involved in this dispute is a carman employed by the Norfolk and Western Railway Company at Brewster, Ohio. At the time the events which brought about this dispute occurred, Claimant had been employed by the Carrier for a little less than one and a half years. On date of November 21, 1980, Carrier wrote Claimant as follows:

"You are hereby assessed a fifteen (15) day actual suspension as a result of your being absent without permission from your assigned position during your tour of duty second shift November 20, 1980, from the medium and heavy car shop line. Your suspension will commence on Monday, November 24, 1980. Therefore, you will be expected to return to duty at 3:30 P.M. December 9, 1980."

In accord with the Agreement on that property the Local Chairman wrote Carrier contending that the suspension was excessive and unjust and that Carrier had acted without having complete facts. The Local Chairman also requested a formal

hearing in behalf of the Claimant. The hearing was once postponed, but then held on date of December 23, 1980. On date of January 21, 1981 Carrier advised Claimant by letter that the fifteen (15) day actual suspension assessed against him was upheld.

The facts in this case are relatively simple, but with some of the testimony very much in dispute. The Claimant's tour of duty was 3:30 P.M. to 12:00 Midnight. At approximately 11:00 P.M. or very shortly thereafter Claimant left his immediate work area to take a shower and change his clothes. He apparently did not return to the work area and performed no more work for the Carrier that night.

Claimant alleges that he was soaking wet and cold and that he had permission from his foreman to leave the work area and take the shower. Carrier has not denied the wet and cold part of the testimony but does deny giving Claimant permission to leave the area or to take the shower. Claimant apparently left the property of the Carrier before the actual close of the shift. He does not claim that he had permission to do this. Carrier contends and is supported by testimony including that of the Claimant that the same thing happened on at least one previous occasion.

In their defense, the Organization contends that the hearing was unfair in that the foreman did not testify in person at the hearing, but submitted a written statement instead. Carrier on the other hand alleges that if the Organization wanted to question or cross examine the foreman they should have requested his presence prior to the hearing.

The Organization also contends that:

"In effect Claimant had obtained permission from his immediate supervisor to be absent from duty in accordance with Rule 10 of the controlling Agreement ..."

Carrier denies that Claimant had received any such permission.

In considering these contentions we do not consider the hearing as being unfair simply because the Claimant's immediate supervisor submitted a statement to be entered into the record. On the contrary, we feel that this is desirable as a written record is thus made while the events are still fresh and clear in the witness's mind and while it might have looked better had he also appeared for questioning at the hearing, it is most doubtful if this would have changed anything at all except perhaps to drag out the hearing a little longer. There are also some troubling unanswered questions in the claimant's testimony. If, as he says, both him and his "pardner" were soaking wet and cold why was not the "pardner" called to verify this? Also why was it apparently only necessary for the Claimant to take a shower and change his clothes? The other employe could hardly have been immune to such physical discomforts. Also if this wet and cold condition was the reason for the shower and change of clothes why did not the claimant then return to the work area instead of leaving the property? There was after all approximately one half hour remaining of the working day after he had completed his shower and change of clothes.

In regards to Claimant's contention that he had permission from his foreman to take a shower, a contention denied by the Carrier. It is well established that this Board does not resolve such issues of credibility and we shall not do so in this case. But even if we were to do so there would still be no satisfactory explanation for the Claimant leaving the property approximately a half hour before the close of the shift. We must deny this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1984